

## **REMARKS/ARGUMENTS**

This responds to the office action mailed on September 10, 2004. Claims 1-3 are pending in the present application. Claims 1-3 are rejected. Reconsideration and allowance of the claims is respectfully requested in view of the following remarks.

Claims 1 and 2 were amended, claim 3 was cancelled, and new claims 4 and 5 were added. Claims 1 and 2 were altered to more specifically cover a computer-readable medium, while claims 4 and 5 are method claims of claims 1 and 2. This amendment is seen by Applicant as cosmetic, and as such, is not subject to the prosecution history estoppel imposed by Festo. For the record, Applicant points out that the Supreme Court in Festo noted that a cosmetic amendment would not narrow the patent's scope and thus would not raise the estoppel bar.

### **The 35 U.S.C. §102(e) Rejections**

The Examiner rejected claims 1-3 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. US 2004/0012620 to Buhler et al. (Buhler). Under 102(e), each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference. MPEP 2131.

Buhler discloses a customized multimedia information channel system presenting advertisement information and, if desired, other multimedia streams on a mobile communication and computing device equipped with a Liquid Crystal Display (LCD) designed to meet modern business-to-business (B2B) requirements. In this connection, interactive operation is guaranteed by a bi-directional digital wireless data and control link realized as an IrDA interface between said device and an item to be advertised. Page 4, par. [0033].

Claim 1 has been amended to recite:

**A computer-readable medium containing programming instructions for controlling brightness from a display unit, the programming instructions comprising:**  
**calculating a display brightness in a certain window displayed on a screen of said display unit; and**  
**controlling said display unit so as to change said brightness of said display unit according to said calculated display brightness.**

Buhler is not, so far as Applicant has been able to determine, in any way related to calculating a display brightness. At best, Buhler is capable of receiving control information (e.g. control parameters for adjusting the audio volume and the screen brightness of the multimedia display device, respectively) from a remote control device. Page 5, paragraph [0051]. A user in Buhler can give input to the multimedia display device in three ways: by touching the screen in case a touch sensitive display is applied, by means of speech input over an integrated microphone, by contactless smart card which can be detected when hold close enough to the multimedia display device, or by sending input information over an Infrared Data Association (IrDA) interface. Page 6, par. [0057].

Not only does Buhler fail to teach or suggest calculating a display brightness *in a certain window* displayed on a screen of said display unit, but Buhler also fails to teach or suggest controlling said display unit so as to change said brightness of said display unit *according to said calculated display brightness*. If the Examiner maintains the rejection then Applicant respectfully requests that the Examiner more specifically direct the Applicant's attention to the portions of Buhler that teach or suggest claim 1.


Claim 1 is an independent claim and is in condition for allowance. Because the secondary references stand or fall with the primary references, claims are allowable because they are dependent upon the allowable independent claims. Claim 2 is dependant upon claim 1 and includes all the limitations of claim 1. Therefore, Buhler also fails to teach or suggest claim 2. Claim 2 is in condition for allowance.

Claims 4 and 5 are method claims similar to claims 1 and 2 and are allowable for the same reasons as claims 1 and 2. Accordingly Applicant respectfully requests reconsideration and allowance of claims 1, 2, 4, and 5 as now presented.

Applicant's attorney believes that this application is in condition for allowance. Should any unresolved issues remain, Examiner is invited to call Applicant's attorney at the telephone number indicated below.

Respectfully submitted,

SAWYER LAW GROUP LLP

A handwritten signature in black ink, appearing to read "Michael R. Johnson", is written over a horizontal line.

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Date